IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.630 OF 1994

Sunil Motiram Mohite
age 27 years, Resident of
Khandala Dholpada,
Taluka Alibag, District Raigad .. Appellant.

V.

The State of Maharashtra .. Respondent.

Shri A.R.Rasal for the appellant.
Shri S.S.Tatkare APP for the respondent.

CORAM : SMT.RANJANA DESAI &
D.B.BHOSALE, JJ.

DATED : 21ST JULY, 2005.

JUDGMENT: (PER D.B.BHOSALE, J.)

1. This appeal is directed against the judgment and order dated 18th July, 1994 rendered by the IInd Additional Sessions Judge, Raigad-Alibag in Sessions Case No.80 of 1992 by which the appellant - accused no.1 has been convicted alongwith Purshottam Gharat - accused no.2 for the offence punishable under section 302 read with 34 of the Indian Penal Code. Both were sentenced to suffer imprisonment for life. The appellant, Purshottam Gharat - accused no.2 were charged for the offences punishable under section 147, 148, 302 read with section 149 of the Indian Penal Code alongwith Mohan Mohite (accused no.3),

Krishna Mhatre (accused no.4) and Dharmendra Shetty (accused no.5). Since accused nos.3 and 5 were absconding their case was separated vide order dated 4.2.1994 and accused nos.1, 2 and 4 only were tried for the said offence. Krishna Mhatre (accused no.4) came to be acquitted by the impugned judgment. Purshottam Gharat (accused no.2) had filed separate criminal appeal bearing No.566 of 1994 in this Court. His appeal was heard by the Division Bench presided over by D.K.Trivedi, J., and he was acquitted by their judgment and order dated 26.10.1999.

2. It is against this backdrop Mr.Rasal, learned counsel for the appellant submitted that the role attributed and allegedly played by the appellant and Purshottam Gharat (accused no.2) was identical. The evidence against both was similar and in view thereof for the self same reasons the present appellant also deserves to be acquitted. The learned A.P.P. could not and did not dispute the submissions made by the learned counsel for the appellant.

3. We perused the judgment of this Court dated 26.10.1999 in Criminal Appeal No.566 of 1994 filed by Purshottam Gharat. We also procured the impugned judgment and the evidence led by the

prosecution and in particular the testimony of Sudhir Patil (PW.3). It appears that Vishwas Yogendra Mhatre was done to death on 24.2.1992 at 5.30 p.m. at Karle-Khind on Alibag-Pen road. The deceased - Vishwas Mhatre was arrested under MISA and was released just 10-12 days prior to the occurrence. According to the prosecution the appellant, Purshottam Gharat (accused no.2) and other accused allgedly chased the motor-cycle on Alibag-Pen road which was being driven by the deceased. Sudhir Patil (PW.3) was pillion rider. They were proceeding towards Alibag. The accused were in Ambassador car. They allegedly banged the car against motor-cycle of the deceased and Sudhir Patil (PW.3). After the motor-cycle was stopped the accused got down from the Ambassador car and allgedly assaulted the deceased - Vishwas Mhatre with different weapons which they were carrying at the relevant time. In so far as the present appellant and Purshottam Gharat are concerned, they were also armed with sharp cutting weapons. PW.3 identified them as the assailants. PW.3 was the only eye witness to the alleged occurrence whose evidence was reassessed by this Court in Criminal Appeal No.566 of 1994 filed by Purshottam Gharat. After considering his evidence and other material placed on record by the prosecution this Court in paragraph 12 and 13 of the judgment dated

26.10.1999 observed thus:

> "12. As observed earlier, one person has lost his life is not in dispute, but whether the accused are responsible for such murder ? If we discuss the evidence of PW.3 and if we are of the view that the learned Judge was not right in accepting PW.3 as eye witness, conviction of the accused deserves to be set aside. At this juncture, we may also observe that the investigation carried out by the Investigating Officer in the serious matter like this, is not properly done, An Investigating Officer, once he receives the information about cognizable offence and in the present case mother of the deceased has reported the fact about murder of her son as found from PW.3 when she went at the scene of offence and when the investigating officer had to investigate the case. In our view, from reading of the entire evidence and more particularly reading of the evidence of PW.10 we have to observe that the Investigating Officer has not conducted the investigation properly and in the correct direction to find the culprit. The court is not required to be guided that the accused are criminals and even the deceased had criminal history. As found from the deposition of PW.10, the Investigating Officer, when the complainant has narrated by disclosing the name of the two accused viz. Purshottam and Sunil as assailants with their address viz. residents of Khandala and the incident in question has occurred on 24.2.1992, nothing is disclosed to the court that what steps the Investigating Officer has taken to apprehend the accused whose names are found in the F.I.R. Even the other accused arrested in the crime were arrested after 9.3.1992. No attempt is made to have an identification of the accused through PW.3 as he posed to be the eye witness to the incident. We are not discussing much about investigation as admitted by the Investigating Officer that he noticed at the time of arrest of the accused on 9.3.1992 that the blood found on the shirt of accused Mohan and inspite of that no recovery of the clothes were effected after three days viz. on 12.3.1992. We are not

> discussing much about the narration given by the witness on the colour of the Ambassador car as it is hardly relevant for the purpose of considering whether the accused were responsible for the murder.
>
> 13. In our view, the learned Judge was not right in accepting the evidence of PW.3 or other circumstantial evidence convicting the accused and on total appreciation of the evidence of the entire case, we are of the view that the appellant accused deserves to be acquitted and accordingly the appeal filed by the appellant accused no.2 Purshottam is allowed. The order of conviction and sentence convicting the accused under section 302 read with section 34 I.P.C. is set aside and the accused is set at liberty forthwith, if he is not required in any other case".

3.1 From the perusal of the judgment dated 26.10.1999 and the evidence placed on record by the prosecution we were satisfied that the role allegedly played by the appellant and Purshottam Gharat was identical. The evidence against both was common. Their case cannot be separated. In this view of the matter for the reasons recorded in the judgment and order dated 26.10.1999 in Criminal Appeal No.566 of 1994 this appeal also stands allowed. The impugned judgment and order of conviction under section 302 read with 34 of the Indian Penal Code dated 18.7.1994 passed by the Additional Sessions Judge, Raigad at Alibag in Sessions Case No.80 of 1992 is quashed and set aside. The appellant is directed to set at liberty forthwith, if not required in any other case.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)